

**ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE**

September 7, 2021

1:31 p.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Joshua Revak, Vice Chair
Senator Gary Stevens
Senator Elvi Gray-Jackson

MEMBERS ABSENT

Senator Peter Micciche

OTHER LEGISLATORS PRESENT

Senator Lora Reinbold

COMMITTEE CALENDAR

SENATE BILL NO. 3006

"An Act relating to utilization review requirements; making temporary changes to state law in response to the novel coronavirus disease (COVID-19); relating to telemedicine and telehealth; relating to background checks; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB3006

SHORT TITLE: HEALTH CARE REQS; COVID-19; TELEHEALTH

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

09/02/21	(S)	READ THE FIRST TIME - REFERRALS
09/02/21	(S)	L&C
09/07/21	(S)	L&C AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

ADAM CRUM, Commissioner
Department of Health and Social Services

Anchorage, Alaska

POSITION STATEMENT: Introduced SB 3006 on behalf of the administration.

SARA CHAMBERS, Director

Division of Corporations, Business & Professional Licensing
Department of Commerce, Community and Economic Development
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis for SB 3006.

RENEE GAYHART, Director

Division of Health Care Services
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 3006.

STACIE KRALY, Chief Assistant Attorney General

Civil Division
Human Services Section
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 3006.

ANNA LATHAM, Deputy Director

Division of Insurance
Department of Commerce, Community and Economic Development
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 3006.

ALEXIS APPLE, Policy Associate

American Telemedicine Association
Arlington, Virginia

POSITION STATEMENT: Testified in support of SB 3006.

JARED KOSIN, President and CEO

Alaska State Hospital and Nursing Home Association
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 3006.

ACTION NARRATIVE

[1:31:12 PM](#)

CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Stevens (via teleconference), Gray-Jackson (via teleconference), and Chair Costello. Senator Revak arrived soon thereafter.

SB3006-HEALTH CARE REQS; COVID-19; TELEHEALTH

1:31:50 PM

CHAIR MIA COSTELLO announced the consideration of SENATE BILL NO. 3006 "An Act relating to utilization review requirements; making temporary changes to state law in response to the novel coronavirus disease (COVID-19); relating to telemedicine and telehealth; relating to background checks; and providing for an effective date."

She noted that this was the first hearing of the governor's bill that was introduced after the special session call was amended.

1:33:05 PM

ADAM CRUM, Commissioner, Department of Health and Social Services, Anchorage, Alaska, stated that SB 3006 provides specific tools that health care leadership has identified as necessary to support Alaska's health care system and workforce respond to the Delta variant of the COVID-19 virus. Despite robust testing, education, and vaccines for every Alaskan who wishes to get vaccinated, he said the surge of infections has negatively impacted the already fatigued and stressed health care system and workforce that has been on the front line for more than 19 months.

COMMISSIONER CRUM said specific tools are required to address this health care emergency. He reported that over the last month, the executive branch has had extensive contact with Alaska's health care providers and facilities to identify what hospitals and caregivers need and the most appropriate mechanism to provide those tools. He said these partners have identified: 1) the need to reduce barriers to training, licensing, and employing health care professionals, 2) the need to reduce barriers to telehealth and telemedicine to Alaskans by providers outside of Alaska, 3) the need for insurers to waive utilization review requirements and for consenting patients to be seen in a lower acuity setting than an emergency department.

COMMISSIONER CRUMB advised that a number of tools that were identified could be accomplished through the authority the legislature provided in HB 76. Other tools could be implemented

with the emergency regulations for programs that are currently in place. For example, the Alaska Board of Nursing recently adopted regulations to amend the Certified Nursing Assistant (CNA) program by establishing a CNA emergency curtesy license. He said this will allow additional human resources to be deployed to strengthen the health care system safety net.

COMMISSIONER CRUMB stated that SB 3006 was selected instead of a disaster declaration because the latter does not provide the specific tools needed or the authority for the governor to draft, suspend, or amend existing statutes. That authority resides with the legislative branch. He concluded that this legislation is a critical component in assisting Alaska's health care network.

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SENATOR REVAK joined the committee.

[1:38:01 PM](#)

SARA CHAMBERS, Director, Division of Corporations, Business & Professional Licensing, Department of Commerce, Community and Economic Development (DCCED), Juneau, Alaska, presented the sectional analysis for SB 3006 that read as follows:

Section 1.

States the purpose of this Act is to provide for mitigation measures that will enhance the state's ongoing efforts to reduce the spread of COVID-19 under the uncodified law.

Section 2.

Allows the DOI director to order health care insurers to waive utilization review requirements by adding a new subsection (f) to AS 21.06.080: General Powers, Duties; Catastrophes.

MS. CHAMBERS noted that the foregoing would be a permanent change.

Section 3.

Suspends the requirements, under AS 08.64.170 (medical) and AS 08.68.160 (nursing), to allow health care providers licensed, permitted, or certified in good standing in another jurisdiction to provide telehealth and telemedicine services to patients in Alaska without being required to obtain an Alaska license or first conduct an in person physical exam,

from the effective date of this Act to July 1, 2022. This does not allow a health care professional not licensed in Alaska to provide in-person treatment in Alaska or to prescribe a controlled substance.

[1:39:53 PM](#)

MS. CHAMBERS advised that Section 3 contains the same language the legislature previously passed to address COVID-19.

Section 4.

Suspends the requirements, under AS 47.05.300 - AS 47.05.390, as these statutes pertain to background checks for employees of hospitals and nursing facilities, from the effective date of this Act to July 1, 2022. It requires hospitals and nursing facilities to provide sufficient information to attest to the hiring process for all employees at the facility and confirm that a background check has been conducted as part of the hiring process.

Section 5.

Provides for an immediate effective date.

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SENATOR STEVENS referenced [page 1] line 11 and asked Commissioner Crum to clarify where the state is in terms of either a disaster or emergency.

COMMISSIONER CRUM replied that is referring to the federal public health emergency that the U.S. Department of Health and Human Services put in place, some provisions of which will be in place until the end of calendar year 2021. He noted that some health departments have requested extensions, particularly for the 1135 blanket waivers that provide flexibility for alternate care sites.

SENATOR STEVENS summarized his understanding that subsection (f) allows DHSS to move ahead under the federal public health emergency so there is no need for a state disaster or emergency declaration.

[1:43:36 PM](#)

COMMISSIONER CRUM replied subsection (f) has to do with things that fall under the Department of Commerce, Community and Economic Development, particularly related to insurance preauthorizations.

1:44:28 PM

SENATOR COSTELLO referenced page 2 lines 29-30 and asked for an example of a law or regulation that the commissioner of health and social services might waive.

COMMISSIONER CRUM cited the example of a regulation requiring finger printing. If that is an impediment to hiring health care providers that come from outside and enter Alaska's health care system, he would consult the Department of Law to determine whether or not that requirement should be temporarily waived.

CHAIR COSTELLO noted that Section 4 suspends the requirement for individuals hired to work in hospitals or nursing facilities to undergo background checks, but the facility has to be able to confirm that a background check was conducted as part of the hiring process. She asked if that was correct.

1:46:22 PM

COMMISSIONER CRUM answered yes; Alaska State Hospital and Nursing Home Association (ASHNHA) facilities typically check an applicant's background as part of the hiring process and then send the application to the state [for DHSS to conduct a background check, as provided by statute]. He said this is an extra hurdle that SB 3006 temporarily suspends.

He also clarified that when he responded to her first question he failed to recognize that the provision that allows the DHSS commissioner to waive a state law or regulation is specifically related to telemedicine and telehealth. The example he cited to waive the fingerprinting requirement was not in the correct context. He apologized for the misstatement.

CHAIR COSTELLO asked how many individuals work on the background check team and what the time frame is for turning the information around.

COMMISSIONER CRUM deferred the question to Renee Gayhart.

1:48:03 PM

RENEE GAYHART, Director, Division of Health Care Services, Department of Health and Social Services (DHSS), Juneau, Alaska, explained that the DHSS background unit currently has five permanent fulltime employees and two short term nonpermanent employees. The division is also in the process of hiring one long term nonpermanent employee. Other people within the division are also assisting with certain components of the

background check. Regarding flow, she said it is taking the division about 12 business days to complete an application with fingerprints and payment, which is within the allotted 15 days.

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CHAIR COSTELLO how many applications are being processed in a month.

MS. GAYHART replied the division is processing about 30,000 background checks over the course of a year, which translates to an average of 2,500 per month.

CHAIR COSTELLO asked what the process is when an individual fails a background check.

MS. GAYHART replied the applicant is notified that they failed. The employer may request a waiver and the variance committee will review the request and evaluate the barring crime(s). The request may be approved, denied, or approved with limitations. For example, an individual may be able to work in the facility for a certain number of hours per day as long as they are under supervision.

CHAIR COSTELLO asked how many individuals are currently working under a variance.

MS. GAYHART replied the national background system that tracks the status of all applications is down so she did not have an accurate report. She offered to provide the information by running a manual report.

CHAIR COSTELLO asked if that was the reason for this portion of the bill.

MS. GAYHART answered no; the intention is to relieve the administrative burden from hospitals and nursing facilities and keep them fully staffed during the surge of infections.

1:52:26 PM

CHAIR COSTELLO highlighted the disparity between her comments and the language on page 3, lines 11-12 that indicates that hospitals and nursing facilities will be conducting background checks.

1:52:49 PM

MS. GAYHART clarified that many hospitals and nursing facilities use a third party to do certain registry checks and the hospitals and nursing facilities are attesting that those checks have been done. This is tracked at the commissioner's office where a determination is made regarding a suspension. If the commissioner makes the determination to end the suspension, those individuals may go through the application process. That means that those nurses and skilled professionals, and with this extension some non-Title 8 providers, will have to attest that they have done that third-party check. She noted that this bypasses some civil registries within the state.

CHAIR COSTELLO asked how this legislation helps a hospital or nursing facility that has a nursing shortage. She added that this indicates that a number of people are waiting for their background checks to be processed so they can be hired.

MS. GAYHART answered that what happens now is that individuals coming to the state or already in Alaska would have to go through the background check process. That takes from 12 business days to several weeks after an individual has submitted their completed application. With the suspension, hospitals may hire and immediately put to work those individuals who have gone through that third-party background work. They do not need to wait to go through the department's background process.

CHAIR COSTELLO asked her to state on the record what the public value is to having background checks and why they have been done in the past.

MS. GAYHART answered that, "The reality of the background check is really just trying to protect our most vulnerable recipients that are on Medicaid." She suggested that Commissioner Crum and Stacie Kraly may want to supplement her answer.

CHAIR COSTELLO asked Commissioner Crum if he supported the legislation completely.

[1:56:24 PM](#)

COMMISSIONER CRUM answered yes because the more fully a hospital is staffed, the faster it can turn over beds. He said the surge in COVID-19 cases is the big reason for wanting this legislation but the cyberattack is also a factor. That slowed the system as a whole and affected smaller groups that may not have the capacity to do third-party background checks.

CHAIR COSTELLO asked if the state would be exposed to increased liability if it suspended the department's background checks.

COMMISSIONER CRUM deferred the question to Stacie Kraly.

1:58:14 PM

STACIE KRALY, Chief Assistant Attorney General, Civil Division, Human Services Section, Juneau, Alaska, advised that the provision articulated in Section 4 mitigates any liability because it requires the attestation by the facility that a third-party background check was conducted for the doctors, nurses, and other medical professionals licensed under Title 8. She opined that the need for this flexibility outweighs the liability at this time.

She referenced a question posed earlier regarding variances and further advised that the majority of individuals are not tied to facilities but to different types of providers that must submit to background checks.

CHAIR COSTELLO referenced subsection (c) on page 2 that gives the DHSS commissioner the authority to waive certain state laws or regulations. She asked Commissioner Crum if he said he was considering waiving fingerprinting for telemedicine.

2:00:05 PM

COMMISSIONER CRUM apologized that when he used the example of waiving fingerprinting it was not in the context of telemedicine and telehealth. He was referring to something else that did not move forward.

CHAIR COSTELLO invited Anna Latham to provide her testimony.

2:01:05 PM

ANNA LATHAM, Deputy Director, Division of Insurance, Department of Commerce, Community and Economic Development (DCCED), Juneau, Alaska, advised that she would speak to Section 2 that gives the director of insurance the ability to order health care insurers to waive utilization requirements during a federal or state public health disaster or emergency. She said the division did this previously when the governor issued a public health disaster emergency declaration in December 2020. She added that while the division's regulatory authority of insurance is nominal, SB 3006 does allow any preauthorization to be waived during a public health emergency.

CHAIR COSTELLO asked if this applies to a federally declared emergency.

MS. LATHAM answered yes; it would be a federal emergency through the U.S. Department of Health and Human Services.

[2:02:51 PM](#)

CHAIR COSTELLO asked for confirmation that there is no state voice in a declaration that is made at the federal level.

MS. LATHAM answered that the director of the Division of Insurance would have that authority in both a federal emergency and a state public health disaster.

CHAIR COSTELLO asked for an explanation of the value of a utilization review that this legislation waives.

MS. LATHAM explained that the statutes governing the Division of Insurance allow insurers to require a utilization review (UR) before a procedure. For example, before hip surgery the insurer would receive medical documentation that the procedure is appropriate or required so insurance would pay for the procedure.

CHAIR COSTELLO asked if individuals have found in the past when UR was waived that their insurance would not pay for the procedure because it was not preauthorized.

[2:04:15 PM](#)

MS. LATHAM answered no; the Division of Insurance has not received any complaints or heard from insurers that procedures were denied when the preauthorization was suspended or waived.

CHAIR COSTELLO asked for an explanation of the purpose of Section 2 other than speeding the process for procedures and the release of patients from the hospital.

MS. LATHAM answered that Section 2 allows health care providers to deliver service without first fulfilling the preauthorization requirements. For example, before a surgery an insurer may require a specific diagnosis and additional tests such as MRIs and ultrasounds. With the waiver, those tests would not absolutely be required before the patient is treated.

SENATOR STEVENS asked when the current federal waiver ends and how it would be extended if needed.

[2:04:48 PM](#)

MS. LATHAM offered her understanding that the current federal health emergency ends on October 15, 2021 unless it is extended at the federal level.

CHAIR COSTELLO asked if she was saying that Section 2 would remain in effect as long as there is a federally declared disaster or emergency that extends beyond July 1, 2022.

MS. LATHAM offered her understanding that the dates in Section 3 pertain to telemedicine, whereas Section 2 pertains to waiving the utilization review and that ends on October 15, 2021 with the federal emergency declaration.

CHAIR COSTELLO summarized that Section 2 is tied to the federal declaration whereas the other sections are effective until July 1, 2022.

She advised that because this was the only committee of referral for the legislation, the committee would review the fiscal notes once they were all available.

[2:08:11 PM](#)

CHAIR COSTELLO opened public testimony on SB 3006.

[2:08:24 PM](#)

ALEXIS APPLE, Policy Associate, American Telemedicine Association (ATA), Arlington, Virginia, stated support for SB 3006 on behalf of ATA and the more than 400 organizations it represents. She reported that ATA is the only national organization whose sole mission is to advance telemedicine in the U.S. Ensuring access to affordable quality healthcare is a priority. She said ATA members believe that SB 3006 will serve as a rational and timely supplement to Alaska's telemedicine statutes. It would permit a licensure waiver until January 1, 2022 for out of state physicians and nurses who use appropriate telemedicine technologies to treat patients located in Alaska. She listed the reasons to support the legislation, including that it expands all Alaskans' access to high quality health care. She concluded that this is appropriate as long as the practitioners are using appropriate technology to uphold the established standard of care and can be held accountable for the care they render by their respective regulatory boards and state agencies.

[2:11:21 PM](#)

CHAIR COSTELLO asked if other states are addressing telemedicine and telehealth with legislation that is similar to SB 3006.

MS. APPLE answered yes; more than 23 states have permanently implemented similar legislation and others are looking at it on a temporary basis. She offered to follow up with the names of the individual states.

[2:12:17 PM](#)

CHAIR COSTELLO asked if any licensed professionals residing in those states are pushing back.

MS. APPLE replied some hospital systems have pushed back in an effort to control competition but ATA has not received negative feedback from practitioners. In fact, a large number of physicians have said they would like to practice outside their state of licensure to meet patient needs.

[2:12:56 PM](#)

JARED KOSIN, President and CEO, Alaska State Hospital and Nursing Home Association (ASHNA), Anchorage, Alaska, stated support for SB 3006 and urged its swift passage. He reported that Alaska has risen to the worst point of the COVID-19 pandemic. Health care staffing is severely strained and caregivers are exhausted. SB 3006 offers important measures to accelerate background checks for health care employees, reinstate telehealth flexibility, and create opportunities for more efficient patient throughput to maximize limited hospital resources.

[2:14:13 PM](#)

CHAIR COSTELLO asked if he could provide details to the legislature about the extent and nature of the emergency situation in hospitals that the bill is addressing. She noted that while the bill provides extensive authority to the DHSS commissioner to waive relevant state laws and regulations, the legislature has not received any specific data.

MR. KOSIN offered his belief that the public testimony and the public dialog from hospital operators has painted a transparent picture of the challenges hospitals and nursing facilities are experiencing. Nevertheless, he said he was willing to respond to specific questions and requests for information. He suggested the members email him directly.

CHAIR COSTELLO asked for details about the capacity of hospitals in Alaska and whether people are being turned away.

2:16:37 PM

MR. KOSIN agreed to provide initial information in writing to her office and the legislature in general and to share more as needed.

2:17:22 PM

CHAIR COSTELLO closed public testimony on SB 3006.

SENATOR STEVENS asked how quickly she intended to move the bill because he would be traveling on Thursday and he didn't want to miss an important meeting.

CHAIR COSTELLO replied the intention is to thoroughly vet the bill and work with the administration to get missing fiscal notes. She noted that meetings were scheduled for tomorrow and Thursday.

SENATOR STEVENS said he looked forward to the next two meetings.

[SB 3006 was held in committee.]

2:19:19 PM

There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 2:19 p.m.